

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**In the Matter of Permit 20281 (Application 30358)
and Licenses 904A and 5487A (Applications 1199A and 12073A)**

Woodland-Davis Clean Water Agency

ORDER APPROVING TEMPORARY URGENCY CHANGES

SOURCE: Sacramento River

COUNTY: Yolo County

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On September 12, 2016 (and as amended on September 22, 2016), the Woodland-Davis Clean Water Agency (WDCWA or Petitioner) filed temporary urgency change petitions (TUCPs) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting renewal of the State Water Board's March 28, 2016 Order (March 2016 Order) approving temporary changes to water right Permit 20281 (Application 30358) and Licenses 904A and 5487A (Applications 1199A and 12073A) pursuant to Water Code section 1441. With the TUCPs, WDCWA seeks reauthorization from the State Water Board to temporarily divert water from a new point of rediversion on Reclamation District 2035's (RD 2035) Main Canal and deliver the water to the Davis Woodland Water Supply Project's (DWWSWP) new Regional Water Treatment Facility (RWTF). With the TUCPs, WDCWA also has requested a possible temporary suspension of terms included in the water rights requiring diversions to occur through a fish screened intake structure.

February 12, 2016 TUCPs and March 2016 Order

WDCWA filed the original TUCPs on February 12, 2016 because construction of WDCWA's and RD 2035's new permanent screened joint intake facility on the Sacramento River was behind schedule and at that time it was thought that it would not be completed and ready for use until late October 2016. In the interim, WDCWA proposed using a temporary pump station on RD 2035's Main Canal to allow WDCWA to test and begin to utilize the DWWSWP conveyance facilities and RWTF until the new permanent joint intake facility was on-line. In order to be able to utilize the temporary pump station, WDCWA filed the TUCPs to add a new point of rediversion (which reflects the location of the pump station on the RD 2035 Main Canal) to Permit 20281 and Licenses 904A and 5487A. WDCWA requested to temporarily add the RD 2035 point of diversion on the Sacramento River to Permit 20281 to enable use of the point of rediversion for that permit as well. WDCWA also requested temporary suspension of terms included in the water rights requiring diversions to occur through a fish screened intake structure. Pursuant to Water Code section 1430, the March 2016 Order approving the original TUCPs expired 180 days after the date of its issuance; therefore the Order expired on September 24, 2016.

September 12, 2016 TUCPs

As of September 15, 2016, RD 2035 discontinued use of the unscreened intake, and water diversions under WDCWA's water rights are now being diverted through the new screened intake. However, all necessary testing of the new intake and conveyance facilities has not been completed and WDCWA has indicated that during the testing period there is a remote possibility that the unscreened intake may need to be used if there are any unforeseen failures during final testing. Therefore, with the TUCPs, WDCWA has requested approval from the State Water Board to potentially use the unscreened intake in the unlikely event that the new screened intake needs to be taken off-line during the testing procedures. Should use of the unscreened intake become necessary, WDCWA has indicated that it will comply with operational requirements that WDCWA developed with California Department of Fish and Wildlife (CDFW) staff as documented in an email from CDFW to the Division on September 21, 2016. WDCWA has also requested the continued use of the point of redirection at the temporary pump station in the RD 2035 Main Canal until the DWWSWP conveyance system construction and approvals are complete.

In summary, WDCWA's September 2016 TUCPs were filed to renew the following: 1) approval of the use of the temporary point of redirection; 2) approval of the possible temporary addition of the RD 2035 point of diversion on the Sacramento River to Permit 20281; and 3) approval of the possible temporary suspension of the requirement for diversions to occur through a fish screened intake structure.

2.0 BACKGROUND

Water Right Permit 20281

Permit 20281 was approved on April 14, 2011, pursuant to water right Application 30358, which was filed on April 19, 1994. Permit 20281 allows a 30-day average diversion rate of 80.1 cubic feet per second (cfs) and an instantaneous diversion rate of 100 cfs, to be diverted from January 1 to December 31 of each year from the Sacramento River in Yolo County. The maximum amount that can be diverted under the permit is 45,000 acre-feet annually (afa). The water may be used for municipal, irrigation, and fisheries and aquaculture research purposes within the City of Davis, the University of California, Davis, and the City of Woodland. Diversions under Permit 20281 are required to occur through a fish-screened intake to the diversion structure.

Water Right License 904A

License 904 was originally approved on April 18, 1930, pursuant to Application 1199, which was filed on March 1, 1919. License 904 was subsequently split into two licenses, 904A and 904B, which were approved on December 21, 2012. License 904A allows for an average direct diversion rate of 80 cfs with a maximum instantaneous direct diversion rate of 100 cfs from the Sacramento River in Yolo County from about April 1 through about September 30 of each year, with a total maximum diversion not to exceed 7,500 afa from July 1 through September 30 of each year. The maximum quantity that can be diverted under the license cannot exceed 10,000 afa; the maximum combined diversion under License 904A and License 5487A cannot exceed 10,000 afa. The water can be used for municipal, industrial, irrigation, fisheries and aquaculture research, and incidental fish and wildlife enhancement within the City of Woodland, the City of Davis, and the University of California, Davis. After January 1, 2016, diversions under License 904A are required to occur through a fish-screened intake to the diversion structure.

Water Right License 5487A

License 5487 was originally approved on March 24, 1959, pursuant to Application 12073, which was filed on September 8, 1947. License 5487 was subsequently split into two licenses, 5487A and 5487B, which were approved on December 21, 2012. License 5487A allows for an average direct diversion rate of 80 cfs, with a maximum instantaneous direct diversion rate of 100 cfs, from the Sacramento River in Yolo County, with a total maximum diversion not to exceed 4,919 afa from about October 1 to about October 31 of each year.

The maximum combined diversion under License 5487A and License 904A cannot exceed 10,000 afa. The water can be used for municipal, industrial, irrigation, fisheries and aquaculture research, and incidental fish and wildlife enhancement within the City of Woodland, the City of Davis, and the University of California, Davis. After January 1, 2016, diversions under License 904A are required to occur through a fish-screened intake to the diversion structure.

Davis Woodland Water Supply Project

The DWWSP involves the development of a new surface water supply for the Cities of Woodland and Davis and the University of California, Davis (collectively referred to as the Project Partners). The DWWSP consists of a new fish-screened intake/diversion structure on the Sacramento River and a raw water conveyance pipeline between the intake/diversion structure to a new RWTF. The RWTF will convey treated surface water to the service areas of the three Project Partners.

3.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Davis, as the lead agency, along with the City of Woodland and the University of California, Davis, prepared an Environmental Impact Report (EIR) for the DWWSP. On October 16, 2007, the City of Davis, as acting CEQA lead agency, adopted Resolution No. 07-168, Series 2007, which certified the final EIR, adopted CEQA findings, a statement of overriding considerations and a mitigation monitoring and reporting program, and approved the DWWSP. On November 6, 2007, the City of Woodland, acting as a CEQA responsible agency, adopted Resolution No. 4878, which adopted CEQA findings and the mitigation monitoring and reporting program, and approved the DWWSP.

Since the certification of the EIR, the Cities of Woodland and Davis have formed the WDCWA, a joint powers authority to implement the DWWSP. In November 2015, the WDCWA prepared Addendum No. 8 to the 2007 EIR covering potential environmental impacts from the installation and operation of the temporary pump station, which is the subject of the February 2016 TUCPs. In Addendum No. 8, WDCWA evaluated all resource topics addressed in the original EIR as they related to the installation and operation of the temporary pump station. WDCWA concluded that the proposed temporary pump station would not result in any new or more severe impacts than those discussed in the 2007 EIR, as updated by Addendum No. 5. None of the conditions or circumstances that would require preparation of a subsequent or supplemental EIR pursuant to Public Resources Code Section 21166 exists for the Project with these changes. On November 24, 2015, the Board of Directors of the WDCWA adopted Resolution No. 2015-05 which approved Addendum No. 8 to the 2007 EIR and authorized and directed the General Manager to prepare and file a CEQA Notice of Determination (NOD) reflecting approval of Addendum No. 8. WDCWA provided a memorandum dated September 9, 2016 that discussed the proposed renewal of the March 2016 Order. In the memorandum, WDCWA's consultant concluded that the potential effects of the proposals approved with the March 2016 Order were addressed in Addendum No. 8 and would remain the same with the renewal of the order, and the renewal would not result in any new or changed environmental impacts for the project.

The State Water Board has reviewed the information and memorandum submitted by WDCWA and has considered the 2007 EIR and Addendum No. 8 in approving the TUCPs. The State Water Board will issue a NOD for the TUCPs within five days of approval of this Order.

4.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITION

The State Water Board will issue as soon as practicable, a notice of the TUCPs pursuant to Water Code section 1438. The petitioner will be required to publish the notice in a newspaper having a general circulation and published within the county wherein the point of diversion lies. The State Water Board will also post the notice and TUCPs on the Division website and will distribute the notice through its electronic notification system.

Any interested person may file an objection to the temporary change with the State Water Board. (Wat. Code § 1438, subd.(d).) The State Water Board may issue a temporary urgency change order in advance of the required notice. (Wat. Code § 1438, subd. (a).)

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order.

The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest.
(Wat. Code, § 1435, subd. (b)(1-4).)

5.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an “urgent need” means “the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented” However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

In this case, there is an urgent need for the proposed change to maintain the quality of the supply water into the new RWTF during the initial start-up phases of the DWWSP. The RWTF was completed in June 2016, and the March 2016 Order allowed the Project Partners to begin diverting Sacramento River water from its temporary pump station in RD 2035's Main Canal, treat the water at the new RWTF, blend the treated water with pumped groundwater and ultimately deliver the water to customers in Woodland and Davis. WDCWA has indicated that as the distribution system adjusts to the new blended water supply, it is important that the current blend ratio of water supplies remain consistent for the cities to maintain compliance with water quality supply requirements.

WDCWA's diversions are currently taking place at the new screened intake, however the new intake is also currently undergoing final operational testing and WDCWA is concerned that should the new intake facility encounter any unforeseen problems during final testing, it may become inoperable until the situation is remedied. In the unlikely event that the new screened intake needs to be shut-down for a period of time, and the March 2016 Order is not renewed, WDCWA's Sacramento River diversions would have to be suspended and the water supply would revert to 100 percent groundwater. WDCWA indicates that the return to a supply consisting of pure groundwater would disrupt the surface-groundwater blending operations that have been occurring since June 2016. This could potentially cause water quality supply issues for both Woodland and Davis. Further, due to current groundwater quality, if Woodland and Davis had to revert to use of 100 percent groundwater supplies, WDCWA indicated that they may be unable to meet current hexavalent chromium drinking water criteria.

5.2 No Injury to Any Other Lawful User of Water

There are no other diversions between the present point of diversion and the proposed temporary point of redirection, so the temporary change will not result in the injury to any other legal user of water.

Accordingly, granting these TUCPs will not result in injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

5.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

WDCWA prepared DWWSP EIR Addendum No. 8 to cover the changes proposed with the TUCPs. The addendum covered potential impacts as a result of the use of the existing RD 2035 intake on the Sacramento River to deliver sufficient quantities of water into the Main Canal, which would then be redirected from the temporary pump station through the newly constructed pipeline to the RWTF. WDCWA determined that the amount of water required for testing and initial operations, and delivery of water thereafter to the RWTF, plus RD 2035's average diversions for the past five years, will be well below WDCWA's current diversion limitations. As a result, WDCWA found that there were no changes in the environmental setting or project characteristics that would raise important new biological resources issues related to using RD 2035's existing intake structure on the Sacramento River.

WDCWA also concluded in Addendum No. 8 that construction of the temporary pumping facilities could result in similar, but less severe construction-related impacts to species and habitat identified within the 2007 DWWSP EIR because the temporary pumps would be located on the newly completed gravel ramp at the outlet structure to the Main Canal and would not require construction equipment other than trucks to bring them in on the skids. Implementation of the applicable 2007 DWWSP EIR Mitigation Measures 3.6-7n through 3.6-7x, which include measures for all phases of project construction to address impacts to sensitive species and consultation with state and federal wildlife agencies, as necessary, would still be implemented by the Cities of Davis and Woodland. As a result, there are no changes in the environmental setting or project characteristics that would raise important new biological resources issues.

On September 16, 2016, WDCWA representatives met with CDFW staff regarding the project proposed with renewal of the March 2016 Order. Of primary concern to CDFW was the potential continued use of the unscreened intake on the Sacramento River and the resulting impacts on Chinook winter-run salmon (which are State and federally listed as endangered species). CDFW staff have indicated that the low return numbers of adult Chinook winter-run this year, on top of two consecutive years (2014 and 2015) of nearly complete loss of winter-run production in the upper Sacramento River, has resulted in a need to be extremely protective of surviving juvenile winter-run as they emigrate from spawning habitat to the Delta. CDFW staff indicated that juvenile winter-run Chinook salmon were observed on September 8, 2016 at Knights Landing which is a few miles upstream of the RD 2035/WDCWA point of diversion. CDFW staff advised WDCWA representatives that CDFW would not oppose the TUCPs if the State Water Board's approval for WDCWA to utilize the unscreened intake be conditioned for only emergency shut-down events of the screened intake. Further, CDFW requested WDCWA comply with certain conditions if it becomes necessary to temporarily utilize the unscreened intake. Both WDCWA and RD 2035 have reviewed the conditions proposed by CDFW and both parties have agreed to operate the diversion facilities in compliance with CDFW's conditions.

The State Water Board will condition this approval order that temporary use of the unscreened intake can only occur under the conditions requested by CDFW which are incorporated into this approval order.

Therefore, based on the above information, the State Water Board finds that the proposed changes may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

5.4 The Proposed Change is in the Public Interest

As described in Section 5.1, use of the temporary point of redirection, and the potential use of the unscreened intake are in the public interest as they will allow WDCWA to complete testing of the DWWSP which will provide a necessary and high quality surface water supply to the Cities of Woodland, Davis, and the University of California, Davis.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The petitioner has an urgent need to make the proposed change;
2. The proposed change will not operate to the injury of any other lawful user of water;
3. The proposed change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The proposed change is in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the TUCPs filed by the Woodland-Davis Clean Water Agency for temporary urgency changes in Permit 20281 (Application 30358) and Licenses 904A and 5487A (Applications 1199A and 12073A) are approved and effective until 180 days from the date of this Order.

All existing terms and conditions of the subject permit and licenses remain in effect, except as temporarily amended by the following terms.

1. The following point of diversion from the Sacramento River will be added to Permit 20281:

The existing Reclamation District 2035 intake facility on the Sacramento River is located as follows: California Coordinate System of 1983, Zone 2, North 2,008,400 feet and East 6,667,100 feet, being within the SE¼ of SW¼ of projected Section 27, T10N, R3E, MDB&M.

2. The following point of redirection will be added to Permit 20281 and Licenses 904A and 5487A:

The WDCWA temporary pumping station in RD 2035's Main Canal is located as follows: California Coordinate System of 1983, Zone 2, North 2,008,160 feet and East 6,667,000 feet, being within NE¼ of NW¼ of projected Section 34, T10N, R3E, MDB&M.

3. WDCWA shall only divert through the unscreened intake should an emergency situation related to testing of the screened intake require shut down of the diversions from the screened facility. In the emergency event of the need to divert through the unscreened intake, WDCWA shall comply with the following conditions as agreed to between CDFW and WDCWA:

- a) Emergency diversions from the unscreened intake shall be limited to daytime hours, except pursuant to conditions b) and c) below. The State Water Board and CDFW shall be immediately notified by email in the event that emergency diversions through the unscreened intake occur.
 - b) If WDCWA determines that daytime diversions are insufficient to satisfy municipal water demand, diversion during nighttime hours may occur on a limited basis with immediate notification by email to the State Water Board and CDFW.
 - c) Should it be necessary for diversions to occur at the unscreened diversion during nighttime hours for more than three days to satisfy municipal water demands, fish entrainment monitoring must be conducted in consultation with CDFW.
4. During the effective date of this Order, the following term in both Licenses 904A and 5487A is suspended pursuant to WDCWA's compliance with Term 3 above:
- After January 1, 2016, no water shall be diverted under this license except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the Department of Fish and Game, U.S. Fish and Wildlife Service and National Marine Fisheries Service, as specified at the time the last permit for construction is issued, to protect species of fish listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) or the Federal Endangered Species Act (16 U.S.C. sections 1531 to 1544). Construction, operation, and maintenance costs of the required facility are the responsibility of the Licensee.*
5. During the effective date of this Order, the following permit term in Permit 20281 shall be suspended pursuant to WDCWA's compliance with Term 3 above:
- No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the CDFG, USFWS, and NMFS, as specified at the time the last permit for construction is issued, to protect species of fish listed as endangered or threatened species under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) or the Federal Endangered Species Act (16 U.S.C. sections 1531 to 1544). Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.*
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6. WDCWA shall submit to the Deputy Director for Water Rights on a monthly basis a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order. The first monthly report is due at the end of the first complete month of this Order. WDCWA shall submit a final report summarizing overall compliance with this Order no later than April 30, 2017.
7. This Order does not authorize any act that results in the taking of a threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the licensee shall obtain authorization for an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency changes authorized under this Order.
8. The State Water Board shall supervise the diversion and use of water under this Order for the protection of legal users of water and instream beneficial uses and for compliance with the conditions. Petitioner shall allow representatives of the State Water Board reasonable access to the project works to determine compliance with the terms of this Order.

9. The State Water Board reserves jurisdiction to supervise the temporary urgency changes under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.
10. The temporary urgency changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the State Water Board. The temporary urgency changes approved in this Order shall automatically expire 180 days from the date of approval of this Order, unless earlier revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Leslie F. Grober, Deputy Director
Division of Water Rights

Dated: SEPT 29 2016